

Remarks

The Office Action has been reviewed with care and certain amendments made which are believed to place this application in condition for allowance. Applicants appreciate the attention of the Examiner to this patent application.

Claims 1-20 were pending in this application. Claims 1, 8, 14 and 18-20 were objected to. Claims 14-17 were rejected under 35 USC 102(b) as being anticipated by Earman (US Patent No. 970,897). Claims 1-4, 6-13 and 18-20 were rejected under 35 USC 103 as being unpatentable over Earman in view of Sebastiani (US Patent No. 3,545,091). Claim 5 was rejected under 35 USC 103 as being unpatentable over Earman and Sebastiani in further view of Jan (US Patent No. D480319 S).

In this amendment claims 4 and 14-20 have been canceled. New claims 21-27 have been added.

Claims 1 and 8 were rejected as unpatentable over Earman in view of Sebastiani. The Examiner asserts that Earman includes a “cylindrical portion” and points to figure numbers 23 and 24 of the Earman Patent as representing such. First, 23 and 24 in the Earman patent are wings of a shield that is in the general form of a split cylinder. Pg. 1, Lines 61-66. Therefore, there is no “cylindrical portion” of the Earman patent. Second, the claimed invention is entitled “Level with Cylindrical Handle” and the cylindrical portion of claim 1 is used, as described plainly in the summary and detailed description, as a handle for the level. The wings (23, 24) of the Earman patent are guarded from such a use by the ‘T’ shape of the level disclosed. The Earman patent does not disclose a cylindrical portion as claimed in the present invention.

Furthermore, and in relation to claim 8, the Examiner asserts that Earman discloses the cylindrical portion mounted to the front and rear upper edges of the acutely angled front and rear planer surfaces. Even if the “wings” disclosed in Earman were a “cylindrical portion” they are clearly not connected to the edges of the bent portions 6 or 8; rather the wings extend from the body portion 5 which extends from the edges. The level disclosed in the current invention allows for a sturdy ergonomic level not shown in Earman.

Examiner also contends that Sebastiani discloses the aperture formed in the trapezoidal portion in claim 1 and the aperture formed in the front and rear surface portions of claim 8. Sebastiani does not disclose either. Rather Sebastiani discloses the concept of a level with handholds formed by gaps between a highly asymmetrical handle 11 and the top of a v-shaped main body 11. The asymmetrical handle is key to the invention as it allows a plurality of levels to be mounted in the handle for different measurements. The handholds are not part of the main body in Sebastiani and cannot be because of the v-shape of the main body. The current invention allows for a sturdy compact design with handholds within the typical profile for a level, therefore the asymmetrical design of Sebastiani does not disclose the inventive handholds of the current claims.

Therefore Applicant believes that claim 1 and claim 8 are in condition for allowance. All remaining rejected claims depend from either claim 1 or 8 and therefore are also believed to be in condition for allowance.

Claim 1 has been amended to more precisely point out the claimed invention. This amendment is made for clarity and is not in response to any rejection or art cited by the Examiner, rather the rejections of the Examiner are overcome through the above arguments. Furthermore, claims 1 and 8 have been amended to remove the bullet points objected to by the Examiner.

New claims 21-27 claim a level design including a cylindrical handle portion having a length and an element-contacting means of substantially similar length with a level indicating means mounted therewith.

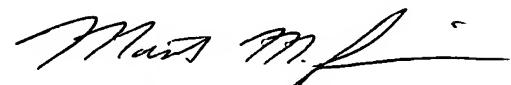
Indeed, Applicants believe that all rejections have been traversed by argument and that all claims are in proper form for allowance. Early favorable action is earnestly solicited. The Examiner is invited to call the undersigned attorney if that would be helpful in facilitating resolution of any issues which might remain.

Serial No. 10/826,539
Amendment dated May 10, 2005
In response to the Office Action of January 10, 2005

Page 8

Please debit Deposit Account 10-0270 in the amount of \$60.00 for the one-month extension of time. If any further fees are due, please debit Deposit Account 10-0270 and inform the undersigned.

Respectfully submitted,



Matthew M. Fannin
Registration No. 51,268

Dated: May 10, 2005
Jansson, Shupe & Munger, Ltd.
245 Main Street
Racine, WI 53403-1034
Atty. Docket No. EMP-127US